90-1641

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

CANTRAL LESTER EARGLE, JR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOHN P. KNOUSE
16970 N. Dallas Parkway
Suite 110
Dallas, Texas 75248
(214) 380-1188
Fax No.: 380-1259
State Bar No.: 11624000

ATTORNEY FOR PETITIONER
AND COUNSEL OF RECORD

QUESTIONS PRESENTED

1. Whether a jury instruction, in a willful failure to file income tax return prosecution, that an accused is not exempt as a matter of law if the church organization through which exemption is claimed is not, negated the court's own charge that the jury could consider his good faith belief that he was exempt as a defense to willful conduct in violation of his Fifth and Sixth Amendment Rights and this court's recent decision in Cheek v. United States?

2. Whether a supplemental jury instruction in a criminal case, shifting the burden of proof to the accused to disprove an essential element of the Government's case, violated his fundamental constitutional right to due process under the Fifth and Fourteenth Amendments of the United States Constitution?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

No. _____

CANTRAL LESTER EARGLE, JR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE WILLIAM H. REHNQUIST, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Cantral Lester Eargle, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Fifth Circuit Court of Appeals (App. A, pp. 1a -9a) is reported at

921 F.2d 56. There was no formal opinion of the District Court.

JURISDICTION

The judgment of the Court of Appeals was entered on January 2, 1991. (App. B, pp. 10a, 11a). A timely petition for rehearing was denied on January 30, 1991. (App. C, pp. 12a, 13a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in applicable part as follows:

> "No person shall ... be deprived of life, liberty, or property without due process of law ..." (See App. E, p. 19a, for full text.)

2. The Sixth Amendment to the United States Constitution provides in relevant part as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ..." (See App. E, p. 20a for full text.)

3. The Fourteenth Amendment, Section 1., to the United States Constitution provides in pertinent part as follows:

> "... nor shall any State deprive any person of life, liberty or property, without due process of law ..." (See App. E, p. 20a for full text.)

4. The misdemeanor crime of willfully failing to file a Federal income tax return in violation of §7203 of the Internal Revenue Code of 1954, is codified at 26 U.S.C. 7203, which provides in relevant part as follows:

"... Any person required under this title ... or by regulations made under authority thereof to make a return ... who willfully fails to ... make such return ..." shall be guiloty of a misdemeanor. (See App. E, pp. 21a, 22a for full text.)

STATEMENT OF THE CASE

1. This case originated in the United States District Court for the Eastern District of Texas upon indictment of the Petitioner, CANTRAL LESTER EARGLE, JR., for three counts of wilfull failure to file income tax returns for the years 1982, 1983 and 1984 in violation of 26 U.S.C. §7203. Petitioner was found guilty on all three counts by a jury on July 6, 1989 and was formally sentenced in a Judgment entered by the District Court on April 26, 1990. (App. D, pp. 14a-18a).

2. A timely appeal was filed to the United States Court of Appeals for the Fifth

Circuit challenging the jury instructions as negating the willfulness element of the criminal charge, for shifting the burden of proof from the Government to the Petitioner and the sufficiency of the evidence. The Court of Appeals affirmed Petitioner's conviction on January 2, 1991 (App. B, pp. 10a, 11a) and denied his timely filed Petition for Rehearing on January 30, 1991. (App. C, pp. 12a, 13a).

3. In 1979, Petitioner, a medical doctor, sought and received a church charter and a minister's status with the Universal Life Church while residing in the state of California. Having been advised there was the Internal Revenue Service Ruling that the Universal Life Church was a tax exempt organization, Petitioner paid all debts on his business property, transferred and assigned all of his assets to the Universal

Life Church, signed a vow of poverty, and commenced operating a church medical center under the auspices of the Universal Life Church.[1]

4. Relying upon his belief that filing the vow of poverty and his assignment of his assets to a tax exempt religious organization exempted him from filing taxes, Petitioner did not file income tax returns for the years 1981, 1982 and 1983, for the living expenses paid to him by the Universal Life Church. Testimony was elicited by the government to reflect a lifestyle that was inconsistent with

****

[1]The opinion of the Court of Appeals recites that the transfer did not include a Swiss Bank account, which was transferred by means of a Power of Attorney as pointed out in Petitioner's Petition for Rehearing. (R. Vol. II, pp. 151, 153)

a vow of poverty.[2]

5. At the conclusion of the evidence, the trial court gave the jury a charge as to the element of "willfullness" necessary to prove the commission of the offense of wilfull failure to file income taxes and as to a good faith belief being a defense thereto. (App. F, Sec. 1, pp. 23a-25a). However, later in the same charge, the court also instructed the

****

[2]While the Court of Appeals recites that the Petitioner drove "luxury vehicles" and lived in a "spacious residence" on a large tract of land, held in the name of the church, the record reflected he drove a 1965 Dodge Pickup, a 1973 or 1974 Dodge Van and a 1977 or 1978 Ford Mustang which was replaced with a 1980 Cougar vehicle and that his home was "in fair to good condition, not fancy in nature, about 15 years old" and in bad repair. (R. Vol. IV, p. 571-573, R. Vol. III, p. 452-459, 460 and 461.) The undisputed testimony was that Petitioner drove old cars, lived in an average house and wore simple average clothes purchased from Sears & Roebuck or WalMart. (R. Vol. IV, pp. 469-471, 497 and 498.)

jury that if the jury found the religious organization through which Petitioner claimed an exemption was not exempt from taxes then as a "matter of law" the Petitioner himself was not exempt from the filing of income taxes. (App. F, Sec. 2, pp. 25a-27a). Petitioner's counsel timely objected to the jury instruction as negating the court's own instruction on "willfullness" on two separate occasions, which were overruled by the trial court. (App. F, Sec. 3, pp. 27a, 28a).

In addition, the trial court gave two conflicting charges as to the burden of proving whether the organization was exempt from the filing of income taxes. Initially, the court instructed the jury of four factors or tests as to whether an organization was exempt from income taxes. (App. F, Sec. 2, pp. 25a-27a) The trial court told the jury that if the Government proved any one of the

four factors, beyond a reasonable doubt that as a "matter of law" the Defendant was not exempt from income taxes and if the government failed to prove at least one of the factors beyond a reasonable doubt that Defendant was exempt from income taxes. (App. F, Sec. 2, pp. 25a-27a). Thereafter, a supplementary instruction was given, prior to argument of counsel, which shifted the burden of proof to the Petitioner herein stating that if the jury was pursuaded beyond a reasonable doubt that the exempt organization did serve a public purpose rather than a private purpose then living expenses would not constitute inurement of the organization's net earnings to the private individual. (App. F, Sec. 4, pp. 28a, 29a).

Having received the instructions given by the Court including the supplementary instructions, the jury convicted Petitioner of

all three counts of wilfull failure to file income tax returns in violation of 26 U.S.C §7203.

The Fifth Circuit Court of Appeals affirmed Petitioner's conviction, finding that the instruction relating to the tax exemption of the church would not be likely to confuse or mislead the jury as to the law governing the willfulness element and that even though the supplemental instruction might tend to mislead or confuse the jury because of a syntactical error, it was not reversible error, in context of the whole charge. (App. A, pp. 6a, 7a).

REASONS FOR GRANTING PETITION

I.

THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT ON IMPORTANT ISSUES INVOLVING FUNDAMENTAL CONSTITUTIONAL RIGHTS.

Six days after the entry of the Order of the Court of Appeals affirming the conviction of Petitioner herein for willful failure to file income tax returns this Court rendered its opinion in Cheek v. United States, 498 U.S. _____, 111 S.Ct. 604, 112 L.Ed.2d 617, a failure to file case, also involving an erroneous jury instruction relating to the critical element of "willfulness". Following a long line of precedent, the majority of the Court held a jury instruction prohibiting a jury to consider evidence which might negate willfulness raises a serious question under the Sixth Amendment's jury trial provision. Cheek v. United States, supra, 111 S.Ct. at p. 611. Similarly, in Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985), this Court held a jury instruction creating a mandatory presumption that shifted to the Defendant the burden of persuasion on a

crucial element of intent is violative of the due process clause of the Fourteenth Amendment. The Supreme Court has consistently condemned conclusive presumptions as conflicting with the overriding presumption of innocence, with which the law endows the accused and which extends to every element of the crime, as invading the fact finding function which the law assigns to the jury in a criminal case. See Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979).

Ignoring the foregoing established precedent of this Court, including the recently determined case of Cheek v. United States, supra, the Fifth Circuit affirmed Petitioner's conviction despite an erroneous jury instructions which effectively directed the jury to find the Petitioner to be a non-exempt from the filing of taxes as a matter of law, if the Church organization under which he claimed

exemption was not, negating its previous instructions as to what consituted "willfulness" and that a good faith belief by the Petitioner that he was exempt from taxes was a defense even if not reasonable. The error in instructions was compounded by the Trial Court's equivocal, Supplementary Jury Instruction, which shifted the burden of proof to the Petitioner to disprove elements of the criminal offense to be proven by the Government, violating Petitioner's Fifth, Sixth and Fourteenth Amendment rights under the United States Constitution.

A. THE DECISION BELOW CONFICTS WITH THE PRIOR DECISIONS OF THIS COURT WHICH REQUIRE THE GOVERNMENT PROVE EVERY ELEMENT OF THE CRIME CHARGE.

It is fundamental in a willful failure to file income tax case, that the Government must

prove beyond a reasonable doubt the accused has acted "willfully in violation of a known legal duty". United States v. Pomponio, 429 U.S. 10, 12; 97 S.Ct. 22, 23; 50 L.Ed.2d 12. The requirement of proof of willfulness "implements the pervasive intent of Congress to construct penalties that separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers". See United States v. Bishop, 412 U.S. 346, 361; 93 S.Ct. 2008, 2017; 36 L.Ed.2d 941. As the Court recently noted in Cheek v. United States, supra, 111 S.Ct. at p. 609 "... The special treatment of criminal tax offenses is largely due to the complexity of the tax laws. ..." Specifically applicable to the instant case, this Court stated in Cheek v. United States, supra, 111 S.Ct. at p. 610 and 611:

> "... Willfulness, as construded by our prior decisions in criminal

> tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. ... But carrying this burden requires negating a defendant's claim of ignorance of the law or a claim that because of a misunderstanding of the law, he had a good-faith belief that he was not violating any provision of the tax laws...forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision." (Emphasis added)

The primary defense proffered by the Petitioner to the criminal charges against him was that he had not willfully failed to file income tax returns for the tax years in question because he believed in good faith that the Universal Life Church was an exempt organization under specific Internal Revenue Service rulings exempting it and that by assigning all of his property and income to

the church and taking a vow of poverty, he believed he had no legal obligation to file income taxes. While the trial court did instruct the jury as to the requirement of proof of willfulness and that good faith was a defense, in the next breath, the trial judge negated his own charge by instructing the jury if the Government proved the church organization was not exempt from taxes then, as a matter of law the Petitioner herein would not be exempt from income taxes. The clear import of the Court's instructions was that it made absolutely no difference whether or not the Petitioner believed in good faith that he was exempt from the filing of income taxes if the Government proved the organization was non-exempt. The trial court thereby eliminated Petitioner's primary defense of good faith belief he was exempt from filing taxes.

As in Cheek v. United States, supra, the Court's instruction prohibited the jury from

considering the Petitioner's good faith defense, which it rendered meaningless, by instructing the jury the Petitioner was non-exempt "as a matter of law" if the organization was found to be non-exempt. The instruction also shifted the burden upon the Petitioner to prove that the organization was in fact exempt in order for him to show that his failure to file was not wilful since his "good faith belief" had nothing to do with it.

The Fifth Circuit of Appeals not only ignored the rulings of the Supreme Court, but also its own decision in Mann v. United States, 319 F.2d 404, cert. den'd., 375 U.S. 986, 84 S.Ct. 520, 11 L.Ed.2d 474 (5th Cir. 1963), where it held that erroneous instructions on intent in income tax evasion prosecutions were not cured by an accurate charge on necessity of proof of intent, as well as the Government's burden of proof, and

that an error in an instruction on intent in an income tax evasion prosecution wherein the sole defense was lack of intent and willfulness, was plain error requiring reversal despite lack of objection.

Furthermore, this Court has held that "... a judge may not direct a verdict of guilty no matter how conclusive the evidence." See Carpenters v. United States, 330 U.S. 395 at pp. 408-409, 67 S.Ct. 775 at p. 782, 91 L.Ed. 973.

B. BURDEN-SHIFTING JURY INSTRUCTIONS HAVE BEEN CONSISTENTLY CONDEMNED BY THIS COURT.

The Fifth Circuit Court recognized that the following supplemental jury instruction, given over objection, "might tend to mislead or confuse the jury because of a syntactical error":

> "[A]n exempt organization that does serve a public purpose rather than a private purpose must of necessity conduct its activities through individuals and may provide those individuals with personal living expenses and if that is the situation and you are persuaded beyond a reasonable doubt existed in this case, then those living expenses provided do not constitute the inurement of the organization's net earnings to the private individual." (App. A, p. 6a and App. F, Sec. 4, pp. 28a, 29a)

No further instruction was given to the jury to clarify whether the Government or the Petitioner herein had the burden to prove that the church organization was exempt, although the initial instruction given was that the Government had the burden to prove the organization was "non-exempt". (App. F, Sec. 2, pp. 25a-27a) The clear implication was if the Government had the burden to prove the organization non-exempt, the Petitioner had the burden to prove it to be exempt, beyond a

reasonable doubt. Appellant's counsel timely objected to the supplemental instruction as placing the burden on the Petitioner herein rather than the Government, to prove the church organization was exempt, pointing out to the trial court that it had shifted the burden of proof. (App. F, Sec. 3, pp. 27a, 28a)

In giving the supplemental instruction, the trial court significantly compounded its previous error in instruction, by giving an instruction that would tend to mislead or confuse the jury into believing that the Petitioner himself had the burden to persuade them beyond a reasonable doubt that the church organization was exempt as an organization that served a public purpose rather than a private purpose. Leaving the jury with this as their last instruction, would lead them to believe if the Petitioner was able to prove

that the organization was exempt, then and only then the income he was receiving as living expenses under a vow of poverty was not taxable per the Court's instruction. The Good Faith belief of the Petitioner was now no longer an issue, in clear conflict with the previous instructions of the trial court. If the Government proved the organization was non-exempt, then as a "matter of law" the Petitioner was non-exempt and had to file returns. On the other hand, if Petitioner failed to prove beyond a reasonable doubt that he was exempt, he also would be guilty of the crime charged. Obviously, this created not only confusion, but a no win situation for an accused in a criminal case in violation of his Fifth and Fourteenth Amendment rights to due process of law.

In recognizing the Supplemental Jury Instruction could "tend to mislead or confuse

the jury' but finding no error, the Fifth Circuit was also inconsistent with its own decisions. In Perez v. United States, 297 F.2d 12, 16 (5th Cir. 1961) where the Fifth Circuit stated "... it is also fundamental to our jurisdiction that instructions to the jury be consistent with each other and not misleading to the jurors ..." and that "... most important, in no condition of proof is it permissible to leave with the jury the idea that it has become the duty of the defendant to establish his innocence to obtain an acquittal." In addition, by holding the previous instructions of the trial court obviated the error, the Fifth Circuit Court ignored its ruling in Mann v. United States, supra, where it stated an erroneous instruction on intent could not be cured by an accurate charge thereon.

The Supreme Court has repeatedly held that a shifting of the burden of proof to the

accused is a deprivation of his Fourteenth Amendment constitutional rights. See Sandstrom v. Montana, supra. and In Re: Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The jury in the instant case was left to consider the guilt or innocence of the Petitioner herein based upon a last minute, confusing and equivocal burden-shifting instruction, which could not be cured by the previous conflicting instructions given by the trial court. As this Court stated in Bollenbach v. United States, 326 U.S. 607, at pp. 612, 613 and 614:

> "... 'The influence of the trial judge on the jury is necessarily and properly of great weight,' Starr v. United States, 153 U.S. 614, 626, 14 S.Ct. 919, 923, 38 L.Ed. 841, and jurors are ever watchful of the words that fall from him. Particularly in a criminal trial, the judge's last word is apt to be the decisive word. If it is a specific ruling on a vital issue and misleading, the error is not cured by a prior unexceptional and unilluminating abstract charge. ..."

"... A conviction ought not to rest on an equivocal direction to the jury on a basic issue. The Government's suggestion really implies that, although it is the judge's special business to guide the jury by appropriate legal criteria through the maze of facts before it, we can say that the lay jury will know enough to disregard the judge's bad law if in fact he misguides them. To do so would transfer to the jury the judge's function in giving the law and transfer to the appellate court the jury's function of measuring the evidence by appropriate legal yardsticks."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN F. KNOUSE
Attorney at Law
16970 N. Dallas Parkway
Suite 110
Dallas, Texas 75248
(214) 380-1188
Fax No.: 380-1259
State Bar No.: 11624000

COUNSEL FOR PETITIONER

Dated: April 25, 1991.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

CANTRAL LESTER EARGLE, PETITIONER

v.

UNITED STATES OF AMERICA

APPENDIX

JOHN P. KNOUSE
16970 North Dallas Parkway
Suite 110
Dallas, Texas 75248
(214) 380-1188
Fax No.: 380-1259
State Bar No.: 11624000

ATTORNEY FOR PETITIONER
AND COUNSEL OF RECORD

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 90-4344
(Summary Calendar)

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CANTRAL LESTER EARGLE, JR.,
Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas

(January 2, 1991)

Before POLITZ, DAVIS, and BARKSDALE, Circuit Judges.

POLITZ, Circuit Judge:

Convicted of failing to file income tax returns in violation of 26 U.S.C. §7203,

Cantral Lester Eargle, Jr., a medical doctor, appeals, challenging the jury instructions and the sufficiency of the evidence. Finding no reversible error, we affirm.

Background

In 1979 Eargle sought and secured ordination as a minister of the Universal Life Church of Modesto, California and received a charter to establish a church. He took a vow of poverty, designated all of the income from his medical practice as church income, and transferred to the church all assets except a Swiss bank account. The church papers were displayed in a rear corridor of his medical clinic and "church meetings" were held in the clinic, attended by Eargle's employees and family.

Testimony elicited by the government reflected a lifestyle inconsistent with a vow

of poverty. Eargle was a member of a country club, drove luxury vehicles, and lived in a spacious residence on a large tract of land, albeit title to the real estate and automobiles was in the name of the church. Further testimony reflected that the Thursday night church services closely resembled medical clinic staff meetings. In addition, evidence indicated that Eargle made deposits in a Swiss bank account during the time that he claimed all medical earnings went to the church, and when he closed the church's Center, Texas bank accounts he transferred the funds to personal accounts in Dallas.

Eargle did not file income tax returns for the years 1981, 1982, and 1983. The jury convicted him of willful failure to file in violation of 26 U.S.C. §7203. Eargle timely appealed.

Analysis

On appeal Eargle raises three alleged errors in the instructions to the jury. When a jury instruction is challenged we assess the challenge in light of the entire charge. We must determine whether the instructions as a whole correctly state the rules of law applicable to the factual and legal situtlon at bar. United States v. Stacey, 896 F.2d 75 (5th Cir. 1990); United States v. August, 835 F.2d 76 (5th Cir. 1987).

Eargle first contends that the trial court erred in its instructions concering the element of willfulness. Eargle does not quarrel with the instructions specifically directed to the willfulness issue, but he maintains that a subsequent instruction regarding the exempt status of the church somehow negated the correctness and adequacy of the earlier

willfulness instruction. The latter instruction advised:

> "... if you find beyond a reasonable doubt that the organization through which the defendant claimed exemption was not organized or not operated exclusively for religious, charitable or educational purposes or any part of the organization's net earnings inure to the benefit of private individuals or the charter of the organization's assets to any of its members or to private individuals if it was dissolved or the organization met or served a private as opposed to a public interest, if the Government has proved any one of these beyond a reasonable doubt, then as a matter of law the defendant is not exempt from income taxes."

We find no merit in the contention that this instruction relating to the question of the tax exemption of the church likely confused or misled the jury about the law governing the willfulness element.

Nor do we find merit in Eargle's claim that the court improperly shifted the burden of proof from the government to Eargle in a supplemental instruction given after counsel objected to a related point. The court instructed the jury:

> "[A]n exempt organization that does serve a public purpose rather than a private purpose must of necessity conduct its activities through individuals and may provide those individuals with personal living expenses and if that is the situation and you are persuaded beyond a reasonable doubt existed in this case, then those living expenses provided do not constitute the inurement of the organization's net earnings to the private individual."

We recognize that the foregoing, taken alone, might tend to mislead or confuse the jury because of a syntactical error. But this instruction may not be viewed in a vacuum; it must be considered as part of the whole. The

court repeatedly informed the jury of the correct burden of proof, that the government had to prove every element of the offense beyond a reasonable doubt. The court specifically informed the jury that the defendant did not have to prove anything. The foregoing isolated statement, viewed in the context of the entire charge, does not constitute reversible error.

Finally, Eargle maintains that the instructions were wanting because they allowed the jury to consider, as circumstantial evidence of the willfulness element, his actions as a tax protester. Eargle does not question the correctness of the circumstantial evidence charge. We find it to be a correct statement of the law. United State v. Booher, 641 F.2d 218 (5th Cir. 1981); United States v. Brown, 591 F.2d 307 (5th Cir.), cert. denied, 442 U.S. 913 (1979). Rather, Eargle contends that

the instruction gave an undue emphasis to the government's case and lessened the government's burden on the willfulness element. We are not persuaded. The instruction did no more than set the parameters and explain proof by the use of circumstantial evidence. This challenge to the jury charge also lacks merit.

The final assignment of error on appeal relates to the sufficiency of the evidence. When assessing the sufficiency of the evidence we view the evidence, and the reasonable inferences that may be drawn therefrom, in the light most favorable to the government. United States v. Bell, 678 F.2d 547 (5th Cir. 1982), aff'd, 462 U.S. 356 (1983). The record contains ample evidence upon which a reasonable jury could find beyond a reasonable doubt that Eargle willfully failed to file tax returns for the years in question. The chal-

lenge to the sufficiency of the evidence, like the challenges to the jury charge, also lacks merit.

The conviction is AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 90-4344
Summary Calendar

D.C. Docket No. L 89 2 CR (01)

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

CANTRAL LESTER EARGLE, JR.,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Texas

Before POLITZ, DAVID and BARKSDALE, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

January 2, 1991

ISSUED AS MANDATE:

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 90-4344

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

CANTRAL LESTER EARGLE, JR.,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Texas

---

ON PETITION FOR REHEARING
(January 30, 1991)

Before POLITZ, DAVIS and BARKSDALE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the Petition for Rehearing filed in the above-entitled and

numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Henry A. Politz
United States Circuit Judge

APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA

V.

Case No.: L-89-2-CR

CANTRAL LESTER EARGLE, JR.
4624 Booth Drive
Plano, TX

John P. Knouse
Attorney for Defendant

THE DEFENDANT ENTERED A PLEA OF:

__ guilty __ nolo contendere as to count(s) _____, and
___ not guilty as to count(s)_____.

THERE WAS A:

____ finding __X__ verdict of guilty as to count(s) 1, 2, and 3 of the indictment (superseding).

THERE WAS A:

___ finding ___ verdict of not guilty as to count(s)_____.
__ judgment of acquittal as to count(s) _____
_____.
The defendant is acquitted and discharged as to this/these count(s).

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF:

26 USC §7203 Failure to File income tax return, as further alleged in the indictment. Counts 1, 2, and 3.

IT IS THE JUDGMENT OF THIS COURT THAT:

The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 1 year. Imposition of sentence is suspended for counts 2 and 3 and the defendant is placed on supervised probation for a period of 5 years for each count. Sentence for counts 2 and 3 are concurrent to each other and consecutive to count 1. Fine is $5,000. for count 1, $5,000. for count 2, and $5,000. for count 3, all fines are consecutive to each other. Defendant is to report to the designated institution on July 27, 1990, at 10:00 A.M.

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall:

(1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
(2) associate only with law-abiding persons and maintain reasonable hours;
(3) work regularly at a lawful occupation and

support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);

(4) not leave the judicial district without permission of the probation officer;

(5) notify your probation officer immediately of any changes in your place of residence;

(6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probatio, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of $25.00 pursuant to Title 18, U.S.C. Section 3013 for count(s) 3 of the indictment (superseding) as follows:

IT IS FURTHER ORDERED THAT counts _____ are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution or special assessment. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, special assessments and costs are fully paid, the defendant shall immediately notify the United States attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

___ The Court orders commitment to the custody of the Attorney General and recommends:

April 23, 1990 APPROVED:
Date of Imposition of Sentence

/s/ Robert M. Parker /s/Jeffrey J. Strand
Signature of Judicial Official AUSA

Robert M. Parker, Chief Judge
Name and Title of Judicial Officer

April 23, 1990
Date

Mld 4-27-90 to: Dept.
Knouse
WSPC

Given 4-27-90 to: USA, St.
WSM
Finance
Dr.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
_____ at _____

_____, the institution designated by the Attorney General, with a certified copy of this Judgment in a Criminal Case.

_____
United States Marshall

By_____
Deputy Marshall

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. The Sixth Amendment to the United States Constitution provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

3. The Fourteenth Amendment to the United States Constitution provides as follows:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the Unied States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

4. The misdemeanor crime of willfully failing to file a Federal income tax return in violation of §7203 of the Internal Revenue Code of 1954, is codified at 26 U.S.C. 7203, which provides:

> "Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person which respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under sec-

tion 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 60501, the first sentence of this section shall be applied by substituting "5 years" for "1 year"."

APPENDIX F

RECORD EXCERPTS

1. Record excerpt from the Court's charge to the jury. (R. Vol. IV, pp. 659-661):

> THE COURT: "... Now, on the willfulness part. And, of course, this is the part of the case that you've heard a lot of testimony about. This is the third element the Government must prove beyond a reasonable doubt that the Defendant's failure to make and file the returns was willfully committed. The word "willful" used in that statute means voluntarily and purposely, deliberately and intentionally, as distinguished from accidental, inadvertent or negligence. It involves an intentional violation of a known legal duty. The failure to act is willful if it's voluntary and purposeful with the specific intent to fail to do what the law requires you to do, that is to say, with a purpose to disobey or disregard the law. The only purpose or motive the Government must prove in this case is the deliberate intention not to file returns which the Defendant knew ought to be filed or the law required to be filed. There is no necessity for the Government to prove that the Defendant had an intention to defraud the Government or evade paying of taxes

for the Defendant's failure to be willful under the taxes for the Defendant's failure to be willful under the provisions of this law. You may consider in this respect such things as the Defendant's education, his background, his familiarity with books and records and the fact that he operated a business and what his gross income was.

A Defendant's conduct in failing to file is not willful if he has a genuine misunderstanding of the tax laws. On the other hand, one who believes, even in good faith, that the income tax laws are unconstitutional is a willful violator if he understands that the law does impose upon him an obligation to file a return. A disagreement with the law is not a defense in this case. If you find that the Defendant was a tax protestor during the years applicable, that is, one who opposed the payment of taxes for political reasons or on legal grounds, you can consider his status as a tax protestor and his statements and his actions concerning the payment of income taxes in determining the question of willfulness in failing to file. You are instructed that if you find that the Defendant had a good faith belief that he was not required to file income tax returns, then you must find him not guilty on each of the counts involved. If the Defendant had a good faith belief that under a vow of poverty all the income received by the Universal Life Church Medical Clinic belonged to the church, then the Defendant could not have acted willfully in failing to file tax returns and not reporting the income that you find that he had. It's true even though a belief might have been mistaken or

indisputably wrong, as long as the belief is found to be in good faith, I think that's what much of this case has been about, a good faith misunderstanding of the law constitutes a defense in a criminal case. It's not necessary that the belief be reasonable. It can be unreasonable as long as it's held in good faith."

2. Record excerpts from the Court's charge to the jury. (R. Vol. IV, pp. 662, 663, and 664):

THE COURT: "... In order to be exempt from income taxes, an individual must have, in addition to taking a vow of poverty, must contribute all his assets and income to an organization which meets certain tests. The organization must be both organized and operated exclusively for religious, charitable or educational purposes. No part of its net earnings may inure to the benefit of a private individual. An organization is regarded as operated exclusively for religious, charitable or educational purposes if the following criteria are met. First, it must have been organized and operated exclusively for exempt purposes, religious, charitable, educational, and not except to an insubstantial degree for a non-exempt purpose. That is to say, an organization is not tax exempt if its activities involve a single non-exempt purposes that is substantial in nature, regardless of

the number or importance of truly exempt purposes. Second, no part of the net earnings of the organization may inure in whole or in part to the benefit of a private individual or stockholder. Private individual for these purposes is a person having a personal and private interest in the activities of the organization. The phrase "net earnings inure to the benefit of a private individual for personal purposes" means that the funds of the organization are used by a private individual for private purposes. Third, the organization cannot have been organized and operated for the benefit of the personal or private interest of an individual, but only for public purposes. In other words, it cannot have been organized and operated for the benefit of private interests such as designated individuals, the creator of the organization, his family or for persons controlled by such private interest. An organization is not organized exclusively for religious, charitable or educational purposes unless its assets on dissolution would be distributed for an exempt purpose and not to members or private individuals. So, to sum it up, if you find beyond a reasonable doubt that the organization through which the Defendant claimed exemption was not organized or not operated exclusively for religious, charitable or educational purposes or any part of the organization's net earnings inure to the benefit of private individuals or the charter of the organization permitted the return of the organization's assets to any of its members or to private individuals if it was dissolved or the organization met or served a private as opposed to a public interest, if the Government has

proved any one of these beyond a reasonable doubt, then as a matter of law the Defendant is not exempt from income taxes."

3. Record excerpts from the Court's charge to the Jury. (R. Vol. IV, pp. 668 and 669):

MR. TYLER: "... I've got another objection, too. I thought the Court had changed this yesterday when we talked, but when the Court -- it's at the top of the second page of the Government's charge said that the Defendant was not exempt from income taxes and I thought the Court was going to say that the church was not exempt from taxes because we've never contended that Dr. Eargle was exempt. The contention is that the church was exempt and you instructed the Jury that if they found that the Defendant was not exempt then they've got to find him guilty. That completely negated your instruction on willfulness. So, we would object to including using the word "Defendant" rather than "Church" and also saying that completely takes it out of the realm he was willful. They've still got to find he was willful and the way the Court charged that I believe you've taken away from them."

MR. STRAND: "My reaction to that, Your Honor, is that the Charge as given covers the two separate considerations that the Jury must take into account here. One is the behavior of the Defendant himself and, secondly, his relationship with the supposedly tax-exempt organization."

THE COURT: "I think we've covered it adequately. Bring in the Jury."

MR. TYLER: "Excuse me, Your Honor. May I make one other comment at this time? Also, I had noted that the Court said it did not make any difference that the IRS had given the Universal Life Church a tax exempt ruling and that surely is also not right because I think it's very important that the Universal Life Church --"

THE COURT: "Counsel, you will have an opportunity to fully object to the Charge in a moment."

4. Record excerpts from the Court's charge to the Jury. (R. Vol. IV, pp. 670-671):

THE COURT: "One other brief addition before you hear the arguments. You heard a lot of testimony in this case from some individuals who had taken a vow of poverty. You heard testimony about the manner in which they lived and how their day-to-day living expenses were handled. An exempt organization may very well have some expenses related to providing necessary living expenses for individuals associated with it. The Court's instructions about what constitutes an exempt organization hold in this case. One, an exempt organization that does serve a public purpose rather than a private purpose must of necessity conduct its activities through individuals and may provide those individuals with personal living expenses and if that is the situation and you are

persuaded beyond a reasonable doubt existed in this case, then those living expenses provided do not constitute the inurement of the organization's net earnings to the private individual.

(2)

No. 90-1641

FILED
JUN 10 1991
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

CANTRAL LESTER EARGLE, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

SHIRLEY D. PETERSON
Assistant Attorney General

ROBERT E. LINDSAY
ALAN HECHTKOPF
BRETT DIGNAM
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

1. Whether, in a prosecution for willful failure to file income tax returns, the district court improperly instructed the jury on whether a church set up by petitioner was exempt from taxation.

2. Whether a supplementary instruction regarding the effect of funds petitioner received from the church's assets improperly shifted to petitioner the burden of proving that the church was an exempt organization.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 921 F.2d 56.

JURISDICTION

The judgment of the court of appeals was entered on January 2, 1991. A petition for rehearing was denied on January 30, 1991. Pet. App. 12a-13a. The petition for a writ of certiorari was filed on April 25, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Texas, petitioner was convicted of willfully failing to file income tax

returns for 1981, 1982, and 1983, in violation of 26 U.S.C. 7203. The district court sentenced petitioner to a one-year term of imprisonment, five years of probation, and fines totalling $15,000. The court of appeals affirmed.

1. Petitioner is a medical doctor who was ordained as a minister in the Universal Life Church in 1979 and received a charter to establish a chapter of the church. He took a vow of poverty and purported to transfer all assets to the church. His lifestyle—which included membership in a country club, ownership of several automobiles, and ownership of a large personal residence—was inconsistent with a vow of poverty. Thursday night "church meetings" that his employees and family attended in his medical clinic closely resembled clinic staff meetings. Petitioner made deposits into a Swiss bank account during the time that he claimed all of his medical earnings went to the church. Finally, when he closed the church's bank accounts, he returned the "church funds" to his own personal accounts. Petitioner did not file income tax returns for 1981, 1982, or 1983. Pet. App. 2a-3a.

2. The district court instructed the jury on the elements of willfully failing to file an income tax return; the two elements in dispute were whether petitioner had a legal obligation to file a return and whether petitioner willfully failed to file a return. With respect to the element of willfulness, the court instructed the jury, in part, as follows:

> A Defendant's conduct in failing to file is not willful if he has a genuine misunderstanding of the tax laws. * * * You are instructed that if you find that the Defendant had a good faith belief that he was not required to file income tax returns, then you must find him not guilty on

> each of the counts involved. If the Defendant had a good faith belief that under a vow of poverty all the income received by the Universal Life Church Medical Clinic belonged to the church, then the defendant could not have acted willfully in failing to file tax returns and not reporting the income that you find that he had. * * *

Pet. App. 24a.

With respect to petitioner's legal obligation to file a return, the court instructed the jury that "[i]n order to be exempt from income taxes, an individual must have, in addition to taking a vow of poverty, must [*sic*] contribute all his assets and income to an organization which meets certain tests." Pet. App. 25a. After a detailed explanation of each of the three prongs of the test the jury should apply, the court instructed the jury as follows:

> [I]f you find beyond a reasonable doubt that the organization through which the Defendant claimed exemption was not organized or not operated exclusively for religious, charitable or educational purposes or any part of the organization's net earnings inure to the benefit of private individuals or the charter of the organization permitted the return of the organization's assets to any of its members or to private individuals if it was dissolved or the organization met or served a private as opposed to a public interest, *if the Government has proved any one of these beyond a reasonable doubt, then as a matter of law the Defendant is not exempt from income taxes.*

Pet. App. 26a-27a (emphasis added). Petitioner unsuccessfully objected to the italicized portion of the

instructions, arguing that the court had negated its willfulness instruction by stating that the defendant, rather than the church, would not be exempt if the government proved beyond a reasonable doubt that any prong of the exempt organizations test had not been met. Pet. App. 27a.

In response to other objections petitioner made to the charge on this element, the court gave a supplementary instruction on the effect of funds of the church inuring to the benefit of petitioner:

> [A]n exempt organization that does serve a public purpose rather than a private purpose must of necessity conduct its activities through individuals and may provide those individuals with personal living expenses and if *that is the situation and you are persuaded beyond a reasonable doubt existed in this case* [*sic*], then those living expenses provided do not constitute the inurement of the organization's net earnings to the private individual.

Pet. App. 28a-29a (emphasis added). Petitioner appears to have objected to the italicized portion of the instructions. Pet. C.A. Br. 35.

3. On appeal, petitioner contended that the instruction summarizing the exempt organization test negated the correctness and adequacy of the earlier willfulness instruction and that the supplementary instruction about public purposes and private inurement improperly shifted to petitioner the burden of meeting the exempt organization test. Pet. App. 4a, 6a.

With respect to the first argument, the court of appeals found no merit in petitioner's contention that the instruction on the tax-exempt status of the church might have confused or misled the jury about the

law governing the willfulness element. Pet. App. 5a. As to the second issue, the court of appeals held that, in context, the challenged instruction could not have misled the jury. The court observed that, viewed in isolation, the instruction might have tended "to mislead or confuse the jury because of a syntactical error." Pet. App. 6a. The court determined that the supplementary instruction did not constitute reversible error, however, in light of the trial court's repeated, specific, and correct instructions on the burden of proof. Pet. App. 6a-7a.

ARGUMENT

1. Petitioner first contends (Pet. 10-18) that the instruction on the "exempt organization" test effectively deprived him of his defense of lack of willfulness, and that the decision of the court of appeals upholding the instruction therefore conflicts with *Cheek* v. *United States*, 111 S. Ct. 604 (1991), and other decisions of this Court. His argument is meritless.

The indictment charged petitioner with failure to file income tax returns, in violation of 26 U.S.C. 7203. The elements of that offense are: (1) a legal obligation to file a return; (2) failure to file a return in a timely fashion; and (3) willfulness. *E.g.*, *United States* v. *Brodie*, 858 F.2d 492, 497 (9th Cir. 1988). The instruction to which petitioner objects addressed the first element of the offense—petitioner's legal obligation to file a return—and was not part of the court's instruction on willfulness. Because petitioner's theory on the first element was that he was exempt from taxes because he had contributed his income to an exempt organization, the court outlined to the jury the various circumstances under which an

organization would not be considered exempt, and then instructed the jury: "If the government has proved any one of these beyond a reasonable doubt, then as a matter of law the defendant is not exempt from income taxes." Pet. App. 26a-27a. In essence, the trial judge instructed the jury that, as a matter of law, petitioner had an obligation to file a return if the church to which he claimed he had dedicated his income did not meet the exemption requirements. Accordingly, this instruction had nothing to do with the willfulness element or the good-faith defense through which petitioner attempted to establish his lack of willfulness.

Petitioner does not claim that the "exempt organization" instruction was an incorrect statement of the law regarding the exemption element. Instead, he asserts that the instruction necessarily altered the burden of proof on the separate element of willfulness. In light of the clear instructions the court gave on willfulness, petitioner's argument is implausible. Those instructions advised the jury that "you must find [petitioner] not guilty" "if you find that [he] had a good faith belief that he was not required to file income tax returns," that petitioner "could not have acted willfully * * * [if he] had a good faith belief" that his income belonged to the church, and that this was "true even though a belief might have been mistaken or indisputably wrong, as long as the belief is found to be in good faith." Pet. App. 24a. There can be no doubt that the jury knew that petitioner did not act willfully if he acted pursuant to a good-faith belief in the lawfulness of his conduct.

Petitioner's reliance on this Court's recent decision in *Cheek* v. *United States*, 111 S. Ct. 604, 610-612 (1991), is misplaced. As required by *Cheek* and prior Fifth Circuit precedent, *United States* v.

Whiteside, 810 F.2d 1306, 1310-1311 (1987), the trial court's willfulness instruction specifically advised the jury to focus on petitioner's subjective intent, without regard to whether that intent was reasonable: "It's not necessary that the belief be reasonable. It can be unreasonable as long as it's held in good faith." Pet. App. 25a.

2. Petitioner also contends (Pet. 18-24) that an instruction given by the trial court impermissibly shifted to him the burden of proving that the church was exempt, rather than requiring the government to prove that the church was non-exempt.

The trial judge properly instructed the jury that the exemption claimed by petitioner would be inappropriate if "any part of the organization's net earnings inure to the benefit of private individuals" and that the government had the obligation to establish this beyond a reasonable doubt. Pet. App. 26a-27a. The trial court also "repeatedly informed the jury of the correct burden of proof, that the government had to prove every element of the offense beyond a reasonable doubt." Pet. App. 7a. Petitioner's argument is based on the supplementary instruction regarding the concept of "inurement." In that instruction, the court explained that an exempt organization that serves a public purpose may provide living expenses to individuals who conduct the organization's activities, and if "you are persuaded beyond a reasonable doubt [that situation] existed in this case," the living expenses do not constitute the inurement of the organization's net earnings to the private individual. Pet. App. 28a-29a.

We agree with the court of appeals that the suggestion that petitioner would have to prove beyond

a reasonable doubt that the expenses did not inure to petitioner's private benefit, "taken alone, might tend to mislead or confuse the jury." Pet. App. 6a. As the court of appeals also recognized, however, jury instructions "may not be judged in artificial isolation, but must be viewed in the context of the overall charge." *Cupp* v. *Naughten*, 414 U.S. 141, 146-147 (1973). A reviewing court must

> recognize that a judgment of conviction is commonly the culmination of a trial which includes testimony of witnesses, argument of counsel, receipt of exhibits in evidence, and instruction of the jury by the judge. Thus not only is the challenged instruction but one of many such instructions, but the process of instruction itself is but one of several components of the trial which may result in the judgment of conviction.

Id. at 147.

Inasmuch as the trial court explicitly instructed the jury that the government bore the burden of proof in the general instruction related to this element, and also instructed the jury repeatedly that the government bore the burden of proof on every element, the court of appeals was correct in concluding that the challenged instruction was not reversible error. In any event, there is no reason to believe that the court of appeals misunderstood the appropriate standard, or has developed a standard that conflicts with the standards applied by other courts of appeals, or that an examination of the issue in this particular context would resolve any legal question of general significance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

SHIRLEY D. PETERSON
Assistant Attorney General

ROBERT E. LINDSAY
ALAN HECHTKOPF
BRETT DIGNAM
Attorneys

JUNE 1991

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